

LAW OFFICES  
LIMITED LIABILITY PARTNERSHIP

LOS ANGELES, CA  
SAN FRANCISCO, CA  
WILMINGTON, DE  
NEW YORK, NY

10100 SANTA MONICA BLVD.  
13th FLOOR  
LOS ANGELES  
CALIFORNIA 90067

TELEPHONE: 310/277 6910

FACSIMILE: 310/201 0760

SAN FRANCISCO  
150 CALIFORNIA STREET  
15th FLOOR  
SAN FRANCISCO  
CALIFORNIA 94111-4500

TELEPHONE: 415/263 7000

FACSIMILE: 415/263 7010

DELAWARE  
919 NORTH MARKET STREET  
17th FLOOR  
P.O. BOX 8705  
WILMINGTON  
DELAWARE 19899-8705

TELEPHONE: 302/652 4100

FACSIMILE: 302/652 4400

NEW YORK  
780 THIRD AVENUE  
36th FLOOR  
NEW YORK  
NEW YORK 10017-2024

TELEPHONE: 212/561 7700

FACSIMILE: 212/561 7777

Jeffrey P. Nolan

October 9, 2020

jnolan@pszjlaw.com

The Honorable Alan S. Trust  
United States Bankruptcy Court  
Eastern District of New York  
Alfonse M. D'Amato Federal Courthouse  
290 Federal Plaza  
Central Islip, New York 11722

Re: **In re: Orion HealthCorp, Inc., et al.**  
**Howard M. Ehrenberg V. Howard M. Schoor**  
**Adv. Proc. No. 20-08042-AST**

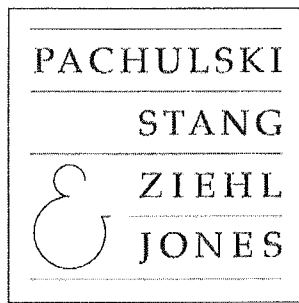
Dear Judge Trust:

Pursuant to 7056-1(a), Howard Ehrenberg, as the duly appointed Trustee, and Plaintiff in the above referenced adversary, moves the court for a pre-motion conference as part of his request to file a motion for summary judgment. Given the moderate amount at issue, the lack of any informal progress and the clear fact pattern, the Trustee desires to resolve the matter without further delay and costs. Plaintiff's position is as follows:

It is undisputed that the Debtor transferred to Defendant, Howard Schoor, \$100,000.00 on January 5, 2017 and \$60,000 on January 6, 2017 (the "Transfer"). Defendant admits receiving the sum. (Answer to Complaint, §17, §19; Dkt no. 5) The Transfer was made on account of a personal loan in 2009 between Defendant and Paul Parmar. The facts demonstrate the loan was purely a personal one based on their friendship and not a business loan. (See email dated August 16, 2010, attached hereto as Exhibit A). Following the Transfer in 2017 Parmar, Ravi Chivukula and Sam Zaharis went back and attempted to cover their tracks by falsifying records and back-dating documents to justify the Transfer as vendor related.

Plaintiff alleges causes of action for intentional and constructive fraudulent conveyance under state and federal law. DCL Section 276 provides that "[e]very conveyance made and every obligation incurred with actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud either present or future creditors, is fraudulent as to both present and future creditors." N.Y. DEBT. & CRED. LAW §





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276.; *Mendelsohn v. Jacobowitz (In re Jacobs)*, 394 B.R. 646, 658 (Bankr. E.D.N.Y. 2008) [I]t is well accepted that intent to hinder or delay creditors is sufficient, and intent to defraud need not be proven.” Id citing to *In re MarketXT. Holdings Corp.*, 376 B.R. 390 at 403 (citing *Shapiro v. Wilgus*, 287 U.S. 348, 354, 53 S. Ct. 142, 77 L. Ed. 355 (1932)). Here, the facts justify a finding of actual fraud under 11 USC 548(a)(1)(A). The personal nature of the loan, falsifying of records by management, and surrounding circumstances all demonstrate the intent to defraud creditors of the Debtor. Further, a constructively fraudulent transfer is one in which the debtor, voluntarily or involuntarily, conveyed to a creditor or other person property for which the debtor received less than “reasonably equivalent value...” No intent of wrongdoing is required. William L. Norton, III and Roger G. Jones, Norton Creditors Possessive Rights Handbook, § 11:6, (November 2003). Transfers made to benefit third parties are not made for “fair” consideration under the bankruptcy code. *Christian & Porter Aluminum Co.*, 584 F.2d 326, 337 (9th Cir. 1978) (a general assignment of a debtor’s property must be considered fraudulent if not made solely for the benefit of creditors). The Debtor missed payroll in 2017 to pay the Defendant on Parmar’s personal obligation. While Defendant suggests in the Answer “some business reason” for making the loan 4 years prior to the Debtor’s existence, the underlying documents contradict the claim.

On May 1, 2020, Plaintiff served written discovery (Interrogatories, Request for Admissions and Request for Production of Documents) on Defendant Schoor. To date, there has been no documentation produced to support a different fact pattern.

Very truly yours,

Jeffrey P. Nolan

JPN:rlm

cc: Donald F. Campbell, Jr, Esq. (Via ECF)  
 (Counsel for Defendant, Howard M. Schoor)



## **EXHIBIT A**



HOWARD M. SCHOOR  
655 PARK AVENUE, SUITE 2  
FREEHOLD, NJ 07728  
(732) 303-0040

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August 31, 2009

Via E-Mail and U. S. Mail

Mr. Paul Parmar  
19 Colts Galt Lane  
Colts Neck, NJ 07722

Mr. Paul Parmar  
Blue Star Funding, LLC  
100 Matawan Road  
Matawan, NJ 07747

Re: \$600,000 Loan

Dear Paul:

On June 8, 2009, you signed a PROMISSORY NOTE to pay in full the amount of \$600,000 plus interest due on or before October 8, 2009.

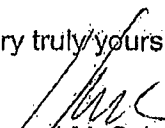
As you know, October 8, 2009 was the outside date for repayment. You clearly indicated your need was for a few weeks of payroll while you resolved an IRS lien placed on multiple accounts and freed up other assets. Your request and my reply was based on "our friendship" and not a business deal. As I discussed with you, I need this repayment now to meet other obligations and commitments.

Please take all steps necessary to arrange and complete a wire transfer of \$600,000 no later than the close of business on September 4, 2009 to:

Chase Bank  
302 West Main Street  
Freehold, NJ 07728  
(732) 294-1071  
Routing Number: 021000021  
Account Number: 806447645  
Customer's Name: Howard M. Schoor

Friendship comes with unique moral obligations; it requires stepping up and honoring your word and the trust upon which I relied.

Very truly yours,

  
Howard M. Schoor

C: Joel Koeppel, Esq.